

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: Carl B. Frankel, Steven A. Sivier, James P. Freyensee, and Carl Cavahagh

Application No. 10/007,816

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on October 3, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

FINAL REJECTION

The Examiner mailed a Final Rejection dated November 30, 2005 wherein claims 1-6, 10, 11, 13-25, and 27-37 were rejected under 35 U.S.C. § 102(b) as being anticipated by Ulrich et al (US Patent 5,466,200).

The Answer reveals an introduction of a new ground of rejection under 35 U.S.C. § 103(a) to claim 36. When a new ground of rejection is introduced in the Examiner's Answer a listing of any new grounds of rejection with prominent identification that has been approved by the TC Director or a designee is required. See *Manual of Patent Examining Procedure*, §1207.02(A)(6)(d).

INFORMATION DISCLOSURE STATEMENT

Appellant filed an Information Disclosure Statement (IDS) dated January 26, 2002 and April 7, 2005. There is no indication on the record that the above Information Disclosure Statement was considered by the Examiner. A written communication notifying appellant of the Examiner's consideration is required.

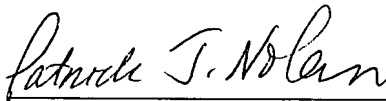
CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the examiner to:

- 1) vacate the Examiner's Answer mailed 08/11/06;
- 2) issue and mail a revised Examiner's Answer, clarifying and properly identifying any new ground of rejection (as outlined above);
- 3) approval of the the Technology Center Director or designee for the new ground of rejection is required;
- 4) consideration of the IDS's discussed above, and;
- 5) for such further consideration as may be appropriate.

BOARD OF PATENT APPEALS
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